IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9553 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

J M SUTHAR DRIVER

Appearance:

1. Special Civil Application No. 9553 of 2003

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/07/2004

ORAL JUDGEMENT

1.1. The petitioner Gujarat State Road Transport Corporation has challenged the judgment and award of the Industrial Tribunal dated 25th November, 2002 in

Reference [I.T.] No. 17/98. By the said award the Industrial Tribunal has set aside the penalty imposed by the petitioner-Corporation and has directed the petitioner-Corporation to pay all the incidental and consequential benefits to the respondent-workman.

1.2. From the record of this petition, it appears that though, respondent-workman was served earlier, he has not appeared in the matter. Mr. Raval had on 2nd July, 2004 made a statement that he will inform the respondent-workman through his officer about the next date of hearing. Today, respondent-workman Jayantibhai M. Suthar is present in the Court. On specific question being asked, whether he wants to engage any lawyer or not, he replied that he is not inclined to engage any lawyer and the Court may pass appropriate orders.

2.1. It is the case of the petitioner-Corporation that the respondent-workman was working as driver with the Corporation. On 6th February, 1995, he was driving a contract carriage bus from Taramaliya to Valsad. When the bus reached near Taramaliya, he drove in an excessive speed inspite of the bus being on a curve. It was also alleged that he was under the influence of alcohol and as a result of this, he lost control over the bus which resulted into serious injuries to nine passengers and heavy damage was done to the bus.

2.2. In view of the aforesaid misconduct, the respondent-workman was chargesheeted vide chargesheet no. 151 of 1998. Departmental inquiry was held and on completion of the inquiry, guilt of the respondent-workman was proved and the disciplinary authority by order dated 30th October, 1995 imposed penalty of stoppage of five increments with future effect.

2.3. Being aggrieved by the order of the disciplinary authority, the respondent-workman preferred First Appeal before the Appellate Authority, which came to be dismissed on 31st January, 1996. Against the said order, the respondent-workman preferred Second Appeal, wherein the Second Appellate Authority vide order dated 2nd August, 1996 partly allowed the appeal and imposed penalty of stoppage of three increments with permanent effect.

3.1. Being aggrieved by the order of the Second Appellate Authority, the respondent-workman raised industrial dispute, which was ultimately referred to the Industrial Tribunal for adjudication. Before the

Tribunal both the parties adduced evidence and after appreciating the material produced before it, the Tribunal set aside the order of disciplinary authority and the Second Appellate Authority and has not imposed any punishment, but has directed that the respondent-workman is entitled to get all the incidental and consequential benefits pursuant to the award with costs of Rs.1,000=00.

3.2. Mr. Raval learned advocate for the petitioner submitted that the misconduct was proved and that was not challenged by the respondent-workman before the Tribunal. It is this impugned order which is under challenge before this Court.

4.1. Having carefully gone through the record of this petition, it appears that while considering the case, the Tribunal has not considered the fact that because of the negligence on the part of the respondent-workman, nine passengers were injured and there was also damage to the bus. Looking to the misconduct committed by the respondent-workman and the loss suffered by the petitioner-Corporation, it is necessary to impose punishment upon the respondent-workman.

4.2. In my view, the penalty imposed by the Second Appellate Authority of stoppage of three increments with future effect is just and proper.

4.3. For the foregoing reasons, the petition is allowed. The impugned order dated 25th November, 2002 passed by the Industrial Tribunal in Reference [I.T.] No. 17 of 1998 is modified to the extent that the penalty imposed by the Second Appellate Authority by way of stoppage of three increments with future effect is restored. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/